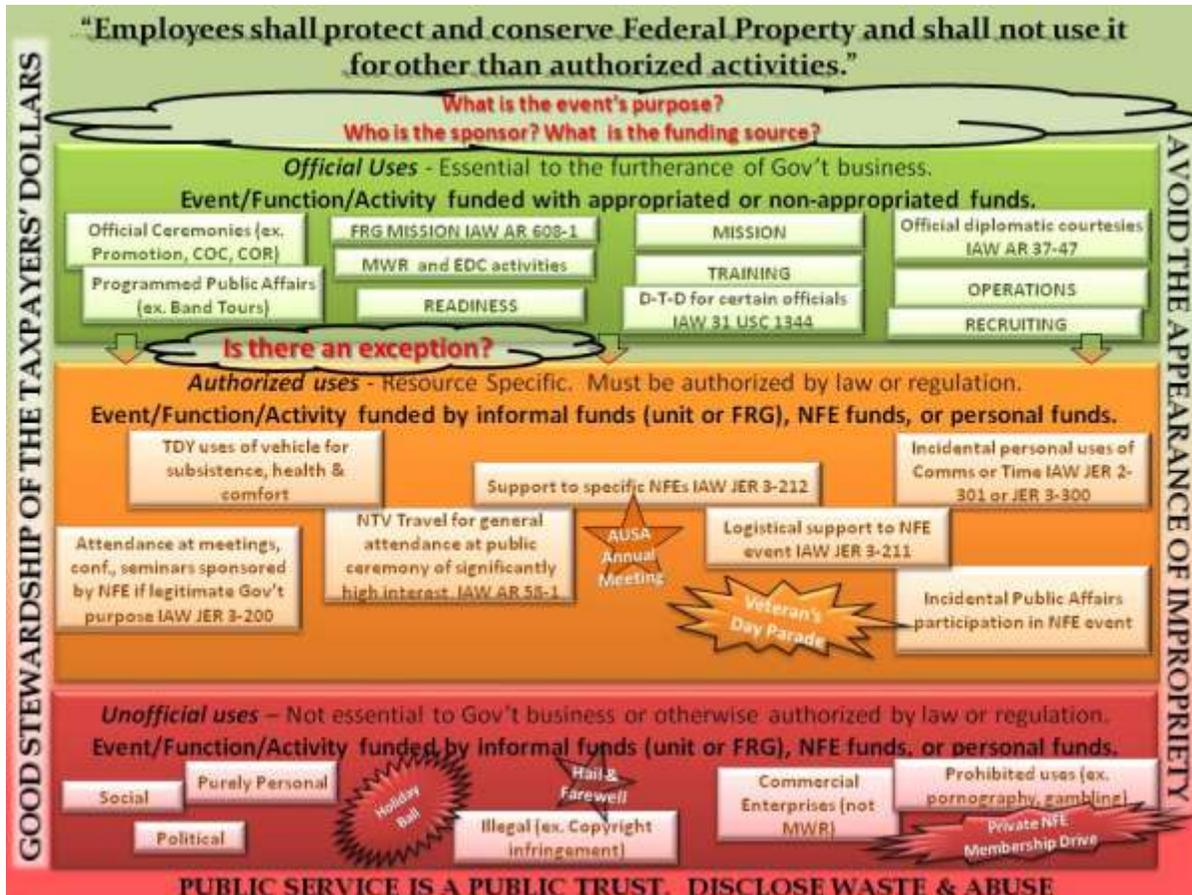


Appendix A

Use of Government Resources Graphic



KEY:

AR = Army Regulation

COC = Change of Command

COR = Change of Responsibility

D-T-D = Domicile to Duty

EDC = *Esprit de Corps*

IAW = In accordance with

MWR = Morale, Welfare, and Recreation

NFE = Non-Federal Entity

FRG = Family Readiness Group

Appendix B

Table of Commonly-Used Resources

RESOURCE	LAW	REGULATION	OTHER GUIDANCE
Military Aircraft		<p>OMB Circular No. A-126, "Improving the Management and Use of Government Aircraft" (22 May 92)</p> <p>DoDD 4500.56 "DoD Policy on the Use of Government Aircraft and Air Travel" (C3, 24 Jun 14)</p> <p>DoDD 4515.13-R "Air Transportation Eligibility" (C3, 9 Apr 98)</p> <p>DoDI 4500.43 "Operational Support Airlift" (C1, 26 Jun 13)</p> <p>Army Directive (AD) 2007-01 "Sec Army Policy for Travel by DA Officials" (25 Jan 07)</p> <p>AR 95-1 "Flight Regulations" (11 Mar 14)</p>	
Government Vehicles	<p>31 USC 1344, Passenger Carrier Use</p> <p>10 USC § 2637, Transportation in Certain Areas Outside the United States</p> <p>39 USC § 1349-1351, Adverse Personnel Actions, Criminal Penalty, & Reports on Violations</p>	<p>DoDD 4500.36-R "Management, Acquisition, and Use of Motor Vehicles" (16 Mar 07)</p> <p>DoDI 4500.36 "Acquisition, Management, and Use of Non-Tactical Vehicles" (C1, 25 Oct 13)</p> <p>Joint Travel Regulations (JTR)</p> <p>AD 2007-01 "Sec Army Policy for Travel by DA Officials" (25 Jan 07)</p> <p>AR 58-1, "Management, Acquisition, and Use of Motor Vehicles" (12 Jun 14)</p> <p>Air Force Instruction (AFI) 24-301, "Vehicle Instruction" (cert. current 17 Aug 12) (contains useful guidance for official use determinations)</p>	<p>U.S. Civilian Board of Contract Appeals, CBCA 2852-TRAV, (28 Aug 12) (rental vehicle fees for personal use)</p> <p>Office of Government Ethics (OGE), No. 85 X 9 (12 Jul. 85) (use of government vehicles)</p> <p>Memorandum from General Counsel, Office of Gov't Ethics, to Designated Agency Ethics Officials, subject: Speaking and Similar Engagements Involving Presentation of Information on Behalf of the Agency (7 Sept. 2012) (use of government vehicles)</p>
Public Affairs Resources	10 USC § 2012, Support and Services for Eligible Organizations Outside Department of Defense	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov. 11), para. 3-211 (logistical support to NFE events)</p> <p>DoDD 5410.18 "Public Affairs Community Policy" (cert. current 30 May 07)</p> <p>DoDI 5410.19 "Public Affairs Community Relations Policy Implementation" (13 Nov 01)</p> <p>AD 2008-01 "Army Aircraft Use for Public Affairs Mission" (02 Nov 10)</p>	

		AR 360-1 "The Public Affairs Program" (25 May 11)	
		AR 220-90 "Army Bands" (14 Dec 07)	
RESOURCE	LAW	REGULATION	OTHER GUIDANCE
Non-Federal Entities	10 USC § 2558, National Military Associations, Assistance at National Conventions	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-212 (special relationships)</p> <p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-211 (logistical support to NFE events)</p> <p>DoDD 1000.26E "Support for Non-Federal Entities Authorized to Operate on DoD Installations" (2 Feb 07)</p> <p>DoDI 1000.15 "Procedures and Support for Non-Federal Entities Authorized to Operate on DoD Installations" (24 Oct 08)</p> <p>AR 210-22 "Private Organizations on Department of the Army Installations" (22 Oct 01)</p>	
Communication Resources		<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 2-301a</p> <p>Fed. Prop. Mgmt. Reg. § 101-35.201-2, Authorized Use of Long Distance Telephone Services, Collection for Unauthorized Use</p> <p>AR 25-1 "Army Information Technology" (25 Jun 13)</p> <p>AR 25-2 "Information Assurance" (RAR 23 Mar 09)</p>	
Personnel & Time	5 USC § 4110, Expenses of Attendance at Meetings	<p>Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 3-300, 3-303</p> <p>5 CFR § 251.202, Agency Support to Organizations Representing Federal Employees and Other Organizations</p> <p>5 CFR § 2635.705, Use of Official Time</p> <p>DoDI 1315.09 "Utilization of Enlisted Personnel on Personal Staffs of General and Flag Officers" (6 Mar 15)</p>	
Official Mail		<p>DoD 4525.8-M "DoD Official Mail Manual" (26 Dec 01)</p> <p>AR 25-51 "Official Mail and Distribution Management" (14 Jan 15)</p>	
Resources Generally		5 CFR § 2635.704, Use of Government Property	

		Joint Ethics Regulation, DoD 5500.7-R (C7, 17 Nov 11), para. 2-301b AR 608-1, App. J “Army Community Service” (13 Mar 13) (FRGs)	
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Appendix C

Practice Pointers

A. Intake

A request to use government resources cannot be comprehensively and accurately analyzed without complete information about the nature of the event and the specific support requested. Gathering this information requires a systematic process for request intake. Personnel requesting armed forces participation in public or NFE events should fill out the standard form for support—DD Form 2536.¹⁸³ For installations where it is not a standard practice, promoting use of the standard form may require JAs to insist that garrison or unit personnel who initially field such requests require its use when interfacing with NFEs. Use of such a form ensures consideration of JER 3-211a criteria;¹⁸⁴ comparable treatment for similarly-situated NFEs and events;¹⁸⁵ a historical record, especially where the legal review is later attached; and, efficient processing of requests. For these same reasons, JAs are encouraged to develop and use a standardized form for requests to provide support to unit events, such as the military ball or unit's organization day.¹⁸⁶

B. Research

Thorough research of regulatory resources and advisory opinions, and consultation with the field, will help JAs arrive at the best solution for use of resources. Judge advocates should begin with the overarching rules contained in the law and Code of Federal Regulations and then systematically work through the JER, DoD, and service regulations for a particular resource.¹⁸⁷ Judge advocates should also search the Office of Government Ethics legal advisories¹⁸⁸ and Government Accountability Office legal decisions¹⁸⁹ databases, where regulations are silent or inconclusive.¹⁹⁰ To ensure some degree of uniformity across the field for events that share similar characteristics, JAs should reach out to fellow Brigade JAs within the unit and reach up to administrative law attorneys at the installation or higher headquarters, as they have likely fielded a similar request. The Administrative Law Group on milSuite¹⁹¹ also serves as a great resource and contains numerous

¹⁸³ U.S. DEP'T OF DEF., FORM 2536, REQUEST FOR ARMED FORCES PARTICIPATION IN PUBLIC EVENTS (Oct. 2010).

¹⁸⁴ See *supra* note 63 and accompanying text.

¹⁸⁵ See *supra* note 174 and accompanying text.

¹⁸⁶ These forms should be standardized across units to the extent possible. For instance, each Brigade Judge Advocate within a Division on the same installation should be utilizing a common form.

¹⁸⁷ See discussion *supra* Part II.A.

¹⁸⁸ U.S. OFFICE OF GOV'T ETHICS, LEGAL ADVISORIES, <http://www.oge.gov/OGE-Advisories/Legal-Advisories/Legal-Advisories/> (last visited Jan. 23, 2015).

¹⁸⁹ U.S. GOV'T ACCOUNTABILITY OFFICE, <http://www.gao.gov/> (last visited Jan. 23, 2015).

¹⁹⁰ See *supra* note 15 and accompanying text.

¹⁹¹ JAG CONNECT—ADMINISTRATIVE LAW, <https://www.milsuite.mil/book/groups/jagconnect-army-administrative-law> (last visited Jan. 23, 2015).

discussions regarding the official or unofficial nature of particular events such as military balls¹⁹² or staff rides.¹⁹³

C. The Legal Review

When writing the legal opinion, set out the general rules for using government resources and any applicable ethics principles that apply.¹⁹⁴ With respect to unofficial events, these general rules and principles set a tone for the opinion and inform the reader that he or she is generally working within an *exception* to the general rule.¹⁹⁵ Highlight any guidance in the regulation regarding how questions of interpretation should be viewed, if the proposed use does not squarely fit within an authorized purpose.¹⁹⁶

Clearly identify the exception that authorizes the use and set out a detailed analysis of how the proposed use meets each factor of any limiting criteria.¹⁹⁷ Provide the commander with courses of action and outline the risks associated with each one. If there are any relevant examples of similar conduct that have come under scrutiny and investigation, point out these examples,¹⁹⁸ even where an investigation was unsubstantiated, but received media coverage.¹⁹⁹ Include the ethics²⁰⁰ principle regarding the appearance of impropriety, where applicable. Even where a particular use of a resource is technically legal and may fit within an authorized use, will it appear as though there was impropriety or illegality? Does it appear to the average observer that the use was provided because of rank or personal convenience?²⁰¹ Lastly, outline any current fiscal restrictions on use of the resource.²⁰²

D. Prevention

¹⁹² See, e.g., Peter Grayson, et al, *Military Balls*, JAG CONNECT—ADMINISTRATIVE LAW (Oct. 11, 2012, 8:38 AM), <https://www.milsuite.mil/book/thread/25539>.

¹⁹³ See, e.g., Mark Robinson, et al, *Staff Ride Legal Analysis*, JAG CONNECT—ADMINISTRATIVE LAW (Oct. 14, 2014, 6:24 AM), <https://www.milsuite.mil/book/thread/131886?sr=stream&ru=148960>.

¹⁹⁴ See *supra* notes 17-20.

¹⁹⁵ See discussion *supra* Part.II.B.3.

¹⁹⁶ See generally DoD 4500.36-R, *supra* note 25, para. C2.5 (stating that questions regarding official use of a government vehicle should be decided in favor of “strict compliance” with law and regulation); Army Dir. 2007-01, *supra* note 50 (“Accordingly, the terms of this policy must be complied with strictly and the terms permitting use of departmental transportation resources construed narrowly.”).

¹⁹⁷ See *supra* note 63 and accompanying text.

¹⁹⁸ See sources cited *supra* note 2 and accompanying text.

¹⁹⁹ Craig Whitlock & Rajiv Chandrasekaran, *Scandal Probe Ensnarcs Commander of U.S., NATO Troops in Afghanistan*, WASHINGTON POST, Nov. 13, 2012, http://www.washingtonpost.com/world/national-security/scandal-probe-ensnarcs-commander-of-us-nato-troops-in-afghanistan/2012/11/13/a2a27232-2d7d-11e2-a99d-5c4203af7b7a_story.html (explaining how the Federal Bureau of Investigation uncovered twenty to thirty thousand pages of documents containing government e-mails that showed inappropriate conversations between General Allen and Jill Kelley, a woman whose report of harassment identified General Petraeus’s mistress).

²⁰⁰ See source cited *supra* note 16 and accompanying text.

²⁰¹ See *supra* note 88 and accompanying text.

²⁰² See sources cited *supra* notes 163-165.

Judge advocates must be proactive in spotting the potential issues for the command through active engagement in the planning process.²⁰³ To achieve this objective, JAs should attend the Interim Progress Reviews (IPRs) and read any Operations Orders (OPORDs) published regarding official events.²⁰⁴ Coordinate with the aide and the support staff if you support a general officer. Tie in with the S3 at the Brigade and stay abreast of key events. Know when key events will occur, such as changes of command, and disseminate a few pointers to the staff to avoid common pitfalls.²⁰⁵ Provide desk-side ethics briefings to new entrant financial disclosure filers²⁰⁶ and emphasize recent ethical hiccups. Judge Advocates need not wait to approach the yearly ethics training deadlines and can get ahead of the issues.

The DoD IG investigation of General Ward also chronicled the failure to follow legal advice and the lack of protection afforded a commander's decision where it ignores legal advice.²⁰⁷ Judge Advocates must build trust, rapport, and credibility with the commander to foster a relationship where the commander comes to rely upon the advice of his lawyer. Early and frequent interaction to help the commander legally and ethically achieve his or her objectives will cultivate this relationship.

²⁰³ See FM 1-04, *supra* note 4, ch. 6.

²⁰⁴ See *id.*

²⁰⁵ See *id.*

²⁰⁶ See 5 C.F.R. § 2634.201 (2014) (public financial disclosure requirements); *id.* § 2634.903 (confidential financial disclosure requirements).

²⁰⁷ See *supra* note 3 and accompanying text.